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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,737	03/22/2004	Harold D. Ochs	J&J-5074	9583

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EXAMINER	
RUNNING, RACHEL A	

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/805,737	OCHS, HAROLD D.	
	Examiner	Art Unit	
	Rachel A. Running	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19 and 21-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19 and 21-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 8-11 and 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, and 9 of copending Application No. 11/239,515. Current application 10/805,737 is broader than application 11/239,515, the difference between the claims of application 11/239,515 and the claims of 10/805,737 lies in the fact that the claims of application 11/239,515 include many more elemenst and is thus much more specific. Thus the invention of application 11/239,515 is in effect a "species" of the "generic" invention of the claims from application 10/805,737. It has been held that the generic invention is "anticipated" by the "species". See In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since

application 11/239,515 is anticipated by application 10/805,737, it is not patentably distinct.

This is a provisional obviousness-type double patenting rejection.

Claim Objections

3. Claim 22 is objected to because of the following informalities: Line 1 contains "the head portion" which lacks a prior antecedent. Examiner believes this claim was intended to depend from claim 21; it will be examined as depending from claim 21. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-12, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rice (US 2,872,929).

Rice discloses a dental floss device comprising a base portion (10b1) and a pair of spaced-apart arms extending from the base portion to accommodate a length of dental floss see Figure 1. Each of the spaced-apart arms has a surface wherein one of the surfaces comprise a cavity (10c4) containing a flavored active (column 2, lines 27-40). The cavity is on a lateral surface of the arm and is extending though the arm to

form a hole see Figure 5. The hole contains a tapered section that increases in diameter way from the surface of the cavity see Figure 5. The flavored active is water/saliva soluble see Figure 1 (column 2, lines 27-40).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-7 and 21-23 are rejected under 35 U.S.C. 103(a) as being obvious over Dougan et al (US 7,059,334) in view of Rice (US 2,872,929).

Dougan et al discloses a dental floss device comprising a handle (2), a dental floss holder (21), the handle having a gripping portion (2) and a head portion (3), the holder having a base portion and a pair of spaced-apart jaws (21) extending form the base portion, and a length of dental floss (5) see Figures 1 and 2 (column 3, lines 23-40). The base portion defines a tongue having lateral engaging surfaces; each engaging surface has at least one detent (11) Figures 3 (a-b). The handle is integrally connected to the base of the dental floss holder see Figure 1. The handle comprises a head portion and an elongated portion, the head portion has a releasable engagement between the handle and the floss holder, a portion for receiving the dental floss holder, and a transversely extending groove defined by a floor, lateral receiving walls, and

terminal snap fit recessions, each of the receiving walls having at least one recess see Figure 3(a) (column 2, lines 1-10). The tongue of the dental floss holder engages the extending groove and the lateral engaging surfaces contact the lateral receiving walls see Figure 1. The snap fit projections (11) of the space-apart jaws engage the terminal snap fit recessions of the head portion see Figure 3(a). Dougan et al discloses the claimed invention except for a cavity for adding substances, the handle and floss holder being made from a polypropylene material, the handle being made from a co-polyester material, the dental floss holder having one recess, and the handle having one detent.

Rice teaches a cavity (10c4) in the spaced-apart jaws having at least one cavity for adding flavored substances, or an active, and is water/saliva soluble see Figure 1 (column 2, lines 27-40). The hole contains a tapered section that increases in diameter away from the surface of the cavity see Figure 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made have the spaced-apart jaws of Dougan et al have a cavity for loading a flavor or an active agent as taught by Rice in order to release the composition while the users flosses their teeth. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the handle and dental floss holder be made from polypropylene and then handle being made from a co-polyester material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dental floss holder have

one recess and the handle have one detent, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 UPSQ 70.

8. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being obvious over Rice (US 2,872,929) in view of Homola et al (U.S. Patent No. 5,980,868). Rice discloses the claimed invention except for the actives being water insoluble.

Homola et al. teach water insoluble dental components (column 11, lines 27-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the components of the combination of Rice be water insoluble in order to create a strong barrier on the tooth.

9. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (US 2,872,929). Rice discloses the claimed invention except for the active being a chemotherapeutic agent, the length of dental floss being a multi-filament yarn and a psudeo-monofilament yarn. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the floss from a multi-filament yarn or a pseudo-monofilament yarn, and the active a chemotherapeutic agent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running
Examiner
Art Unit 3732

Rachel A. Running

Cris L. Rodriguez
CRIS L. RODRIGUEZ
PRIMARY EXAMINER

NEW SHEET

Recommend entry BAR 11/17/06

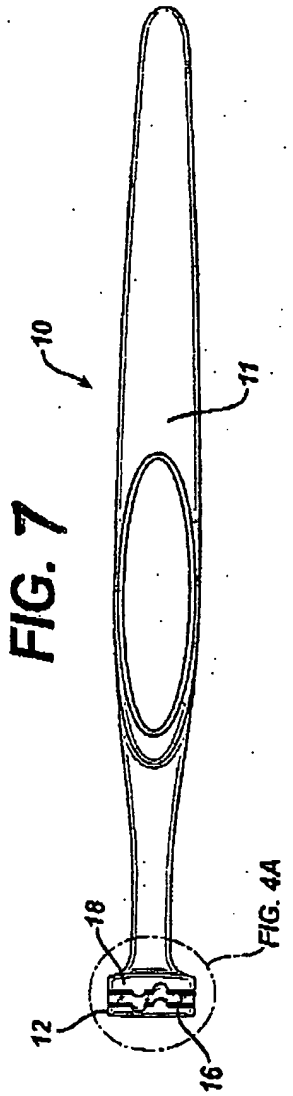

FIG. 7

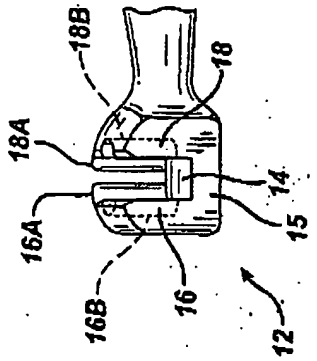

FIG. 7B

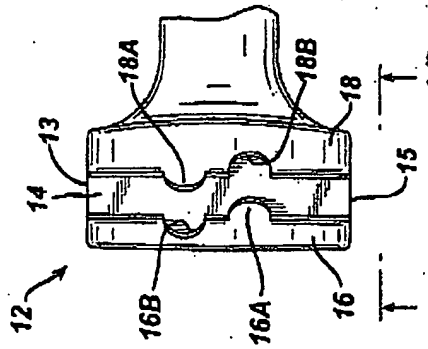

FIG. 7A